85-1477

Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1985

JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY, and ANGELA LUCY, Individually,

Petitioners,

-vs-

AMOCO OIL COMPANY, a Maryland corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

– AND APPENDIX –

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QUESTION PRESENTED

SHOULD THIS COURT REVIEW WHETHER THE DEATH OF A PETROLEUM SERVICE STATION FRANCHISEE IS A PROPER GROUND FOR AUTOMATIC TERMINATION OF A GASOLINE SERVICE STATION FRANCHISE UNDER THE PETROLEUM MARKETING PRACTICES ACT, 15 U.S.C. § 2801, *ET SEQ.*?

Petitioners answer: "Yes"

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Petitioners,

-vs-

AMOCO OIL COMPANY, a Maryland corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to the Order of the United States Court of Appeals for the Sixth Circuit which affirmed the Opinion and Order of the United States District Court for the Eastern District of Michigan, which dismissed Petitioners' claims under the Petroleum Marketing Practices Act of 1978, 15 U.S.C. § 2801, *et seq.* (hereinafter PMPA).

OPINIONS BELOW

The Order of the Court of Appeals for the Sixth Circuit is an unreported Order dated November 22, 1985, *see* Appendix, p B-1; the Opinion and Order of the United States District Court for the Eastern District of Michigan dated June 23, 1983, is reported at 41 C.C.H. Business Franchise Guide, ¶ 8021, *see* Appendix, p A-1.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1); the Order of the United States Court of Appeals for the Sixth Circuit was entered on November 22, 1985, hence this Petition is timely filed.

CONSTITUTIONAL, STATUTORY, AND RULES PROVISIONS INVOLVED

The Petroleum Marketing Practices Act of 1978, 15 U.S.C. § 2801, *et seq.*; pertinent portions set forth in Argument, *infra*.

STATEMENT OF FACTS

Pursuant to a series of lease/franchise agreements between Raymond Lucy and Amoco Oil Company, Raymond Lucy in conjunction with his wife, Janet Lucy, and his daughters, Angela Lucy and Dlorah Lucy, operated a retail gasoline service station owned by Amoco Oil Company, which station was located in Ann Arbor, Michigan. On July 13, 1982, Raymond Lucy and Amoco entered into a lease/franchise agreement for three (3) years, commencing July 1, 1982, *see* Appendix, p B-2. On September 11, 1982, Raymond Lucy died. Several days after his death, Amoco delivered a notice of termination of that franchise to Janet Lucy, stating that the July 13, 1982 lease was terminated effective September 30, 1982. The surviving family, the Petitioners, herein, wished to continue operating this station as they had been an intregal part in the operation of that business for many years. Nonetheless, Amoco invoked a standard clause in their lease/franchise agreement stating that the franchise relationship automatically terminates upon the

death of the franchisee whose sole signature appears on that document. Despite the fact that several individuals in this family operated the business located on these premises, when the individual whose sole name appears on the franchise agreement died, the franchise died with him.

Petitioners filed suit against Amoco Oil Company on or about September 27, 1982. On June 23, 1983, U.S. District Judge Charles Joiner granted Amoco Oil Company's Motion to Dismiss/Summary Judgment, dismissing, *inter alia*, Petitioner's claims that the franchise was improperly terminated in violation of the terms of the Petroleum Marketing Practices Act. Trial was held in April, 1984 on other issues, and an appeal was taken to the United States Court of Appeals for the Sixth Circuit of the issues dismissed by the trial court in June, 1983 and of several issues arising out of the trial. On November 22, 1985, the Sixth Circuit Court of Appeals issued its order affirming the decisions of the trial court in all respects.

ARGUMENT

This Court has never interpreted or analyzed the issue presented under the Petroleum Marketing Practices Act.

Petroleum Marketing Practices Act was enacted to establish minimum federal standards to govern the termination and non-renewal of franchise relationships involving the sale of motor fuel. *Munno* v *Amoco Oil Company*, 488 F Supp 1114 (1980); S. Rep. No. 95-731. More particularly, the PMPA was established to protect a franchisee from an arbitrary discriminatory termination or non-renewal, to protect franchisee independence which may be undermined by the use of threatened ter-

mination or non-renewal to compel compliance with marketing policies of the franchisor, to allay concerns that termination would disrupt the expectations of the parties that the business relationship will be a continuing one, and to compensate for the gross disparity of bargaining power which results in franchise agreements that are essentially contracts of adhesion. S. Rep. No. 95-731. p. 15; *Brach* v *Amoco Oil Company*, 677 F2d 1213, 1216 (CA 7, 1982).

The PMPA provides in pertinent part as follows:

§ 2802. Franchise relationship — General prohibition against termination or non-renewal.

(a) Except as provided in subsection (b) of this section and section 2903 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may —

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed). Precondition and grounds for termination or non-renewal.

(b)(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if —

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such non-renewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or non-renewal of a franchise relationship:

(A) A failure by the franchise to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure —

(i) Not more than 120 days prior to the date on which notification of termination or non-renewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) Not more than 60 days prior to the date on which notification of termination or non-renewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or non-renewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence. —

(i) Not more than 120 days prior to the date on which notification of termination or non-renewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) Not more than 60 days prior to the date on which notification of termination or non-renewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(c) As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or non-renewal of the franchise relationship is reasonable" includes events such as —

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchise;

(3) continuing severe physical or mental disability of the franchisee of at least three months duration which renders the franchisee unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if the franchisee was not notified in writing, prior to the commencement of term of the then existing franchisee —

(A) of the duration of the underlying lease, and

(B) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of non-renewal);

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for —

(A) Seven consecutive days, or

(B) Such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

As can be seen from the text of the Act, Congress has set forth a general guideline for termination upon the "occurrence of an event which is relevant to the franchise relationship and as the result of which termination of the franchise or non-renewal of the franchise relationship is reasonable," 15 USC § 2802(b)(2)(C) and then sets forth twelve illustrations of events upon which termination of the franchise relationship would be reasonable, § 2802(c)(1)-(12).

Not only is death not contained in the list of legislative factors for which termination is permissible, the legislative history and hearings of this act make it clear that Congress intentionally left death out of the enumeration for the reason that it should not be an automatic factor for termination of a franchise. Although all of the reported decisions concerning whether death of a franchisee is a permissible ground for termination have held that the PMPA permits termination upon the death of a franchise, none have addressed the legislative history and/or testimony and hearings as those factors relate to the analysis of this question. *Kostantas* v *Exxon*, 663 F2d 605 (CA 5, 1981), *cert. den.*, 456 US 1009, 102 S. Ct. 2302, 73 L Ed 2d 1305 (1982); *Blankenship* v *Knox Oil Company*, 548 F Supp 789 (E.D. Tenn., 1982); *Ianuzzi* v *Exxon*, 572 F Supp 716 (D. N.J., 1983); *Lanham* v *Amoco Oil Company*, 481 F Supp 405 (D. Md., 1979); *Attal* v *Shell Oil*, 41 C.C.H. Business Franchise Guide, ¶ 8025 (N.J. Sup. Ct., 1983); *Mamourian* v *Exxon*, 47 C.C.H. Business Franchise Guide, ¶ 8093 (D. N.J., 1983).

The courts are in conflict with Congress and this Court must resolve this issue in order to enforce the clear legislative intent.

Having carefully considered whether or not death should be included in the new law, legislators made a conscious decision to reject it as an acceptable reason to automatically terminate a franchise.

MR. DINGELL: WE ARE GETTING CLOSER TOGETHER. ONE OF YOU GENTLEMEN -- AND I BELIEVE IT WAS YOU, MR. McGUIRE, RAISED THE QUESTION OF DEATH IN YOUR TESTIMONY, AS BEING ONE OF THE THINGS THAT YOU WOULD LIKE TO SEE IN THE REASONABLE BUSINESS JUDGMENTS OF THE FRANCHISOR. I BEG YOUR PARDON, IT WAS MR. GRIFFIN WHO RAISED THE QUESTION. YOU RAISED THE QUESTION OF DEATH, ON PAGE 1, THE LAST PARAGRAPH.

> "The right of franchisors to terminate agreements prior to the expirations limited to specifically good causes. Death should be added to the list since the franchise represents personal contract between the parties."

LET ME TAKE TWO INSTANCES WHICH MAY WELL INDICATE THAT PERHAPS THIS MIGHT NOT BE THE BEST WAY FOR US TO GO. AND LET ME START BY GOING INTO THE MATTER FROM THE STANDPOINT OF A MAN WHO IS LONG ILL. HE HAS A WIFE AND A COUPLE OF MINOR KIDS WHO RUN THE BUSINESS FOR HIM TO THE FULL SATISFACTION OF HIS SUPPLIERS, LESSOR, AND AS MATTERS GO FORWARD ON HIS UNFORTUNATE DEMISE, WHICH OCCURS AFTER THIS LONG ILLNESS, THE BUSINESS CONTINUES TO FUNCTION IN THE SAME SATISFACTORY FASHION. SHOULD THAT BE A GROUND REALLY FOR AUTOMATIC CANCELLATION?

MR. GRIFFIN: MR. CHAIRMAN, I DID NOT MEAN TO IMPLY THE DESIRE TO BE ARBITRARY OR CAPRICIOUS IN THAT MATTER. IF IN FACT THAT SORT OF CIRCUMSTANCE PREVAILS I HAVE A HARD TIME BELIEVING THAT THE ASSIGNEE IN SUCH A CASE WOULD NOT BE ACCEPTABLE TO US BUT THE WAY THE BILL IS WRITTEN IT SEEMED TO US THAT THE BURDEN OF PROOF IS ON US AND WE SHOULD HAVE THE ALTERNATIVE IN

THE CASE OF DEATH TO AT LEAST CLASSIFY AS MR. MORRISON LATER TESTIFIED, THAT WE SHOULD PUT THE ASSIGNEE THROUGH A TRIAL PERIOD THE SAME AS WE WOULD THE INITIAL LESSEE.

THERE IS A WIDE SPECTRUM OF EXAMPLES ONE COULD DRAW AND I CAN'T BELIEVE THAT THE ONE THAT YOU USED WOULD BE ONE THAT ANYONE WOULD HAVE ANY TROUBLE WITH FROM A SUPPLIER'S VIEWPOINT.

MR. DINGELL: I CAN'T EITHER AND I DON'T WANT YOU TO GET THE IDEA THAT THESE QUESTIONS ARE HOSTILE. LET ME GIVE YOU A SIMILAR THING. A FELLOW DIES AND HE HAS TWO SONS WHO PERSIST IN RUNNING THE BUSINESS. AND THEY DO SO WITH THE FULL SATISFACTION OF HIS SUPPLIER LESSOR. NOW, IS THERE ANY REASON WHY THAT OUGHT TO BE THE BASIS FOR AUTOMATIC TERMINATION?

LET US CONTRAST THAT WITH A SITUATION WHERE ON HIS DEATH THERE IS NO ONE LEFT TO RUN THE BUSINESS, THE HEIRS OR WHOEVER IT IS RUN THE BUSINESS IN A SLOPPY FASHION OR ARE INATTENTIVE TO THE BUSINESS. IT IS CLEAR TO ME IN THAT INSTANCE THE MATTER SHOULD BE TERMINATED IN REASONABLE HASTE WITH MINIMUM PREJUDICE TO THE SUPPLIER. PERHAPS MAYBE IF ANALYZED THESE DIFFERENT POSSIBLE CIRCUMSTANCES WE MIGHT WANT TO GET TO SOME APPRECIATION OF THE SECTION REFERRED TO.

FIRST OF ALL THE LANGUAGE OF THE SECTION HERE SAYS, AS USED IN SUBSECTION A, THE PHRASE:

> And the event which is relevant to the franchise relationship is the result of termination or nonrenewal of the franchise and is reasonable and includes such events as. In other words, it includes all the events from one down through 13.

MR. GRIFFIN: I UNDERSTAND THAT.

MR. DINGELL: SO FOR ALL INTENTS AND PURPOSES THE SUPPLIERS, IF ANY PERSON GOES TO COURT TO CONTEST THESE ACTIONS, HE JUST SAYS THOSE ARE STATUTORY GROUNDS. AM I CORRECT?

MR. GRIFFIN: I WILL TAKE YOUR WORD FOR THAT.

MR. DINGELL: I DON'T WANT TO TAKE MY COMMENT AS HOSTILE AND, IF YOU DISAGREE I WANT YOU TO COME OUT AND SAY SO.

MR. GRIFFIN: I DON'T THINK IT IS HOSTILE AT ALL. I THINK WE HAVE A BIT OF A PHILLOSOPHICAL DIFFERENCE. AS I SAID IN THE TESTIMONY WE CONSIDER THE SELECTION OF A LESSEE — DEALER AS A PERSONAL THING TO THAT DEALER AND ALTHOUGH THERE ARE MANY CIRCUMSTANCES UNDER WHICH HIS NATURAL SUCCESSORS WHICH ARE ASSIGNED MIGHT BE PERFECTLY SATISFACTORY. WE DON'T THINK THAT THE SUCCESSION SHOULD BE AUTOMATIC BECAUSE EXPERIENCE, I THINK, IF WE ANALYZE IT, WOULD INDICATE THERE ARE MORE TRAGEDIES THAT BEFALL US IN SUCH CIRCUMSTANCES THAN THERE ARE ILLS THE OTHER WAY.

MR. DINGELL: I AM NOT TRYING TO CAST YOU AS HARD-HEARTED IN ANY FASHION. THAT IS NOT MY PURPOSE HERE.

MR. GRIFFIN: I DID NOT TAKE IT THAT WAY AT ALL.

MR. DINGELL: I JUST WANT, SINCE WE ARE WRITING LEGISLATIVE HISTORY, I WANT A FULL APPRECIATION OF THE POWERS AND THE RIGHTS AND THE DISCRETIONS AND THE FACT THAT MIGHT WELL BE INCLUDED UNDER THE 13 ITEMS THAT WE REFERRED TO LOOSELY AS THE LAUNDRY LIST HERE.

Petroleum Marketing Practices: Hearing on H. R. 130 before the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce, 95th. Cong., 1st Sess. 334 (1977).

Therefore, it is not necessary to go beyond the actual Congressional Hearings transcript on the establishment of the PMPA in order to find that death is not a factor which would allow an oil company to *automatically terminate* a franchise. Petitioners do not assert that they wish to create a permanent estate in the franchise relationship, however, it is equally clear that the franchise relationship should not be automatically terminated because of the death of the "named" franchisee.

It should also be noted that this particular franchisor will not negotiate franchise agreements with anyone but an individual franchisee. Immediate family members who share in the performance of the business are thereby precluded from protecting their interest in their livelihood in that fashion.

Every gasoline service station franchise agreement with Amoco Oil Company is a preprinted contract, drafted by Amoco, and containing, *inter alia*, a paragraph providing for the termination of the franchise upon the death of the franchisee. *See* ¶ 15(g) of the Amoco-Lucy franchise agreement, Appendix, p. B-5.

Due to the inequality of bargaining power between the parties, a franchisee has no choice but to agree to any clause placed in such a franchise agreement. Furthermore, if such a "death clause" can be used to circumvent the PMPA, a franchisor could draft in other clauses not expressly provided for in the Act and use those as terminating events.

The agreement drafted by the oil company attempts to define an event as being one that is relevant to the franchise relationship, even though such an event is not in the statutory list. Although the statute does not purport to be exhaustive, the enumerated list is intended to provide a measure of Congressional intent with respect

to the meaning of the statutory standards. Events which are not enumerated in the statute however, must be carefully scrutinized by the courts before determining that those standards have been satisfied. *Lyons* v *Mobil*, 526 F Supp 961 (D. Conn., 1981); S. Rep. 95-731, pp. 37-38, 1978 U.S. Code Cong. and Ad. News at 896. It is of some significance that during the course of the Congressional hearings, death was discussed as an included enumerated reason for termination, and was subsequentally omitted from that enumerated list.

This is not a case of using an isolated statement during a Congressional hearing to determine legislative intent. Rather, it is a conclusion carefully drawn from the hearings before Congress prior to enactment, wherein a specific issue was raised under factual situations remarkably similar to the instant case, which resulted in Congress' decision to omit that factor from an enumerated list of permissible reasons for termination.

Nor is this a case of "much ado about nothing". There are thousands of franchisees. They are small businesses often run by a family. If one member of the family dies the livelihood of the whole is jeopardized under the interpretation given by the courts.

Congress did not intend this jeopardy. Instead, it established a system where death cannot be used to automatically terminate a franchise. This Court is being asked to enforce that intent, and to enforce the language of the statute.

CONCLUSION

The Petroleum Marketing Practices Act does not set forth death of a franchisee as a permissible reason for termination of a franchise. Nonetheless, numerous court decisions, *supra*, have held that death is a permissible factor, the occurrence of which makes termination of the franchise reasonable. Petitioners assert that these case holdings interrupting the PMPA are at odds with legislative intent, that the death of a franchisee should not be a permissible reason for automatic termination, particularly where such a provision only emanates from franchise agreements drafted by oil companies in a setting where bargaining for terms of such an agreement is meaningless or nonexistent. To the extent that all of the court holdings reviewing this decision are in error, this Court should grant the petition for Certiorari to review this important question.

Respectfully submitted,

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Dated: February 18, 1986

APPENDICES

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APPENDIX A

MEMORANDUM OPINION AND ORDER

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated June 23, 1983)

(JANET LUCY, Personal Representative of the Estate of RAYMOND LUCY, Deceased; and JANET LUCY, DLORAH LUCY and ANGELA LUCY, Individually, Plaintiffs, v. AMOCO OIL COMPANY, a Maryland corporation, Defendant — Civil Action No. 82-60316; HONORABLE CHARLES W. JOINER)

This case is before the court on defendant Amoco Oil Company's Motion for Summary Judgment. For the reasons given, the motion is granted in part and denied in part.

FACTS

The pertinent facts are not in dispute. Raymond Lucy operated the Amoco service station at State Street and Hilton in Ann Arbor from 1967 until his death on September 11, 1982. Mr. Lucy entered into periodic lease agreements with Amoco for the land and the building in which he operated his service station. The lease in existence at the time Mr. Lucy died ran for three years, from July 1, 1982 to June 30, 1985. Mr. Lucy's family — his wife Janet, and his two daughters Dlorah and Angela — assisted him in operating the station, although the actual

degree of responsibility assumed by these family members is in dispute.

On September 14, 1982, defendant mailed a letter to the estate of Raymond Lucy terminating the lease and the attendant franchise relationship effective September 30, 1982. Shortly before or shortly thereafter, Amoco representatives contacted Mrs. Lucy to discuss her interest in operating the franchise. However because of the recent death of her husband and apparently on instructions from her attorney, Mrs. Lucy refused to meet with Amoco's representatives.

This lawsuit commenced on September 27, 1982 by the Raymond Lucy estate, and by Janet, Dlorah and Angela Lucy, individually. The original complaint is in four counts: 1) wrongful termination of a franchise relationship in violation of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 *et seq.*; 2) tortious interference with prospective business advantage; 3) intentional infliction of emotional distress; and 4) sex discrimination. On October 18, 1982, plaintiffs filed their first amended complaint to add a count of wrongful termination of franchise based on the common law grounds of unconscionability and waiver.

On October 26, 1982, Amoco sent a second letter to the Lucy estate stating that the franchise would be terminated effective February 5, 1983.

The court denied plaintiffs' motion for preliminary injunction under 15 U.S.C. § 2805(b)(2) on January 27, 1983. On June 14, 1983, the court granted plaintiffs' motion to amend to add to count IV a theory of age discrimination based on Amoco's failure to award the State Street and Hilton franchise to Angela Lucy.

DISCUSSION

The Defendant has moved for summary judgment on the four counts of the original complaint and the one count of the first amended complaint. The age discrimination claim raised in the most recent amendment is not before the court at this time.

A. *Petroleum Marketing Practices Act,* 15 U.S.C. § 2801 *et seq.*

The Petroleum Marketing Practices Act (PMPA), permits a franchisor to terminate a franchise relationship if:

> (A) the notification requirements of section 104 [15 U.S.C. § 2804] are met; and
>
> (B) such termination is based upon a ground described in paragraph (2). . . .
>
> 15 U.S.C. § 2802(b)(1).

As an initial matter, there is no dispute that defendant is a "franchisor" within the meaning of the statute, 15 U.S.C. § 2801(3), that Raymond Lucy was a "franchisee" within the meaning of the statute, 15 U.S.C. § 2802(4), and that a "franchise relationship" existed between them within the meaning of the statute, 15 U.S.C. § 2802(2). There are, then, two issues. Did defendant meet the notification requirements of 15 U.S.C. § 2804, and was the termination based on a ground described in 15 U.S.C. § 2802(b)(2)? The answer to both questions is yes.

It is apparent that the notice requirements of the statute were met. Section 2804(c) prescribes the form of the notice. Defendant clearly provided notice in the requisite form, and plaintiffs do not argue to the contrary. Section 2804(a)(2) requires that the termination be effective after not less than ninety days, except under certain circum-

stances enumerated in § 2804(b). Those circumstances were not called into play in this case because the *second* notice Amoco sent to the Lucy estate, dated October 26, 1982, made termination effective February 5, 1983, more than ninety days later. Thus, as a matter of law, the statutory notice requirement was met.

The second issue is slightly more difficult. A franchise relationship may only be terminated on specific grounds. One ground is:

> The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect. . . .
>
> 15 U.S.C. § 2802(b)(2)(C)

The issue then is whether the death of the franchisee is a "relevant" event as to which termination of the franchise is reasonable. The court holds that it is.

Section 2802(c) is a nonexhaustive list of "relevant events." Death is not expressly included on the list. *Brach* v. *Amoco Oil Co.*, 677 F.2d 1213 (7th Cir. 1982) holds that events not enumerated in § 2802(c) must be carefully scrutinized before being deemed "relevant events" within the meaning of the statute.

Notwithstanding this cautionary note, not less than three of three courts which have considered this issue have held that death is a "relevant event" which permits the franchisor to terminate the franchise relationship. *See Kostantas* v. *Exxon Co., U.S.A.*, 663 F.2d 605 (5th Cir. 1981); *Blankenship* v. *Knox Oil Co.*, 548 F.Supp. 789 (E.D.Tenn. 1982); *Lanham* v. *Amoco Oil Co.*, 481 F.Supp. 405 (D.Md. 1979). Although the reasoning of these three

decisions differs slightly, they are in basic agreement that when a franchisee dies, the franchise relationship is significantly altered to the extent that the statute permits the franchisor to terminate it.

The plaintiffs' arguments to the contrary are unavailing. Plaintiffs rely very heavily on a single statement from Congressman Dingell during a hearing before a House subcommittee considering petroleum marketing practices legislation. *See Petroleum Marketing Practices: Hearing on H. R. 130 Before the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. 334 (1977). A single isolated statement of this sort is not legislative history on which a court may rely in divining the intent of Congress. A far more fruitful approach is to reason from the structure and purpose of the legislation where specific Congressional direction is lacking. To rely on an isolated statement from a single Congressman would be to give infinite and hopelessly contradictory content to virtually all important Congressional legislation. Legislation is forged in a furnace of competing interests and tempered with compromise. Every Congressman could, simply by making statements on the record, place his own distinctive interpretation on legislation were the court to accept plaintiffs' argument. It is only where a *clear* congressional intent emerges from a thorough, comprehensive study of the legislative history that court may safely rely on it.

The PMPA is remedial legislation and, as such, must be liberally construed. However, it does not provide total protection to franchisees and their families. It protects only against unreasonable and arbitrary terminations. *Humbolt Oil Co.* v. *Exxon Co., U.S.A.*, 695 F.2d 386, 389 (9th Cir. 1982). Although it may seem harsh to permit Amoco to terminate a franchise relationship after

fifteen years, where the widow and two daughters have contributed to the successful operation of the station, the PMPA does not bar Amoco from doing just that.

Plaintiffs' argument that a second franchise relationship existed between Amoco and Angela Lucy simply has no basis in fact or law. The statute defines a "franchisee" as:

> a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.
>
> 15 U.S.C. § 2801(4).

There is no evidence of any contract or agreement constituting a franchise between Angela Lucy and Amoco Oil Company. Since a "franchisee" is an essential component of a "franchise relationship", 15 U.S.C. § 2801(2), and since Angela Lucy was not a "franchisee", there could be no separate "franchise relationship" within the meaning of the statute.

Defendant's motion for summary judgment on count I of the original complaint is granted.

B. *Wrongful Termination of Franchise — Common Law*

In their first amended complaint, plaintiffs set forth a theory of wrongful termination of franchise based on the unconscionability of and/or Amoco's waiver of enforcement of paragraph 15(g) of the lease agreement. Paragraph 15(g) of the lease agreement states:

> Lessor shall have the right to terminate or nonrenew this lease, and any applicable franchise relationship under the Petroleum Marketing Practices Act . . . if any of the following events occur:

> (g) Death or other continuing severe physical or mental disability of Lessee of at least three months' duration . . . which renders Lessee unable to provide for the continued proper operation of the gasoline sales facility. . . .

Whatever Michigan law might be as to unconscionability and waiver of enforcement of lease provisions, Congress specifically legislated in the PMPA to permit franchisors to terminate franchise relationships upon the death of the franchisee. *See* Part A. of this opinion. Since Congress has affirmatively acted, state law which is directly contrary is preempted. This is the meaning of the Supremacy Clause of the U.S. Constitution. U.S. Const. Art. VI, cl. 2. *See, e.g., Exxon Corp.* v. *Georgia Assoc. of Petroleum Retailers,* 484 F.Supp. 1008 (N.D.Ga. 1979), *affd. sub nom., Exxon Corp.* v. *Busbee,* 644 F.2d 1030 (5th Cir. 1981).

Therefore, defendant's motion for summary judgment on the wrongful termination of franchise claim in the first amended complaint is granted.

C. *Tortious Interference With Prospective Business Advantage*

Count III of the complaint seems to allege that Amoco intentionally interfered with the prospective business advantage of the Lucy Service Station at some time prior to the death of Raymond Lucy. The motion is granted to all claims except the claim involving the alleged promise of Amoco to install a Hickory Smoked Sausage franchise in exchange for the sale of service equipment. Whether that claim sounds in tort or contract, there are disputes about it of such proportion that summary judgment would not be proper. As to all the other claims, they are covered by the valid and legal termination. Since the termination was lawful there can be no tort for the acts involved in that termination.

D. *Intentional Infliction of Emotional Distress*

This count alleges that Raymond Lucy suffered from hypertension, that Amoco's representatives knew this, and that they nevertheless, over a period of time, maliciously harrassed and coerced him by threatening not to renew his lease and by badgering him to lower his gasoline pump prices in order to encourage higher volume sales. This count also alleges that Mr. Lucy's September 11, 1982 heart attack was a direct result of this harrassment and coercion.

The facts as shown by the record at this time indicate that there is no genuine issue as to any material fact.

Michigan has adopted the Restatement of Torts 2d. tort involving outrageous conduct causing emotional distress. Restatement of the Law 2d Torts § 46. This tort requires the conduct to be extreme and outrageous. The kind of conduct shown in this case involving the defendants' legal rights is not the kind of conduct necessary to support this tort. In addition, it is not shown to be extreme or outrageous. The extension of the franchise shortly before the death is an additional indication that the nature of the conduct did not rise to the level contemplated for this tort. For these reasons, the motion for summary judgment on Count IV of the complaint is granted.

E. *Sex Discrimination*

Count V of the complaint alleges that plaintiffs were discriminated against on the basis of their sex by Amoco's refusal to permit them to continue operating the service station after Raymond Lucy's death. Plaintiffs assert a cause of action under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Elliott-Larsen Civil Rights Act, MCLA § 37.2101 *et seq.*

As an initial matter it appears that plaintiffs have abandoned their claim under Title VII. This is proper because Title VII forbids discrimination on the basis of sex only "with respect to compensation, terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1). There is no evidence of any existing employment relationship between Amoco and Janet, Dlorah or Angela Lucy, nor is there any evidence that plaintiffs sought to enter into an employment relationship with Amoco. Therefore, the motion for summary judgment is granted to the extent that plaintiffs' claim of sex discrimination under Title VII and the Elliott-Larsen Civil Rights Act is grounded on the fact that plaintiffs were employees.

However, Michigan law is broader than Title VII. It prohibits, in addition to employment discrimination, MCLA 37.2202, discrimination in real estate transactions:

> A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of . . . sex . . . :
>
> (a) Refuse to engage in a real estate transaction with a person.
>
> (d) Refuse to negotiate for a real estate transaction with a person.
>
> MCLA 37.2502(1)

There appear to be disputed issues of fact as to whether, after the death of Raymond Lucy, Amoco dealt with plaintiffs in the same fashion it dealt with male survivors of a deceased franchisee and as to whether Angela Lucy's sex was the reason she was denied the Amoco franchise at the State and Hilton location in April, 1983. Therefore, to the extent plaintiffs' claim of sex discrimination is grounded on the premise of Michigan law relating to discrimination in real estate transactions,

Amoco's motion for summary judgment is denied without prejudice.

In summary, the motion is granted in all respects except as to the claims involving the sale of the service equipment in exchange for a Hickory Smoked Sausage franchise in count III and the sex discrimination claim under Michigan law in count V.

So Ordered.

/s/ CHARLES W. JOINER
UNITED STATES DISTRICT JUDGE

Dated: June 23, 1983
Ann Arbor, Michigan

APPENDIX B

ORDER

(United States Court of Appeals for the Sixth Circuit)

(Filed November 22, 1985 — John P. Hehman, Clerk)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

(JANET LUCY, ET AL., Plaintiffs-Appellants, vs. AMOCO OIL COMPANY, Defendant-Appellee — NO. 84-1429)

BEFORE: **MERRITT** and **WELLFORD**, Circuit Judges; **JOHNSTONE**, District Judge*

This cause having come on to be heard upon the record, the briefs and the oral arguments of the parties, and upon due consideration thereof,

The Court finds that no prejudicial error intervened in the judgment and proceedings in the district court, and it is therefore **ORDERED** that said judgment be, and it hereby is, **affirmed**.

ENTERED BY ORDER OF THE COURT
/s/ John P. Hehman,
Clerk

ISSUED AS MANDATE:
December 16, 1985
COSTS: NONE

(Certification Omitted)

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* The Honorable Edward H. Johnstone, United States District Judge, District of Western Kentucky, sitting by designation

EXHIBIT "B"

AMOCO OIL COMPANY LEASE # B-20474-1

Amoco Oil Company

SAP 5421-13679-21
Lease #B-20474-1

Lease
3b 342 (3-81)

This Lease, made this 13 day of July, 19 82 between Amoco Oil Company, a Maryland corporation, with its Regional Office at 2211 York Rd., Oak Brook, Il. 60521, Lessor, and Raymond V. Lucy, whose business address is State & Hilton, Lessee,

Witnesseth: That

1. Lessor hereby demises and leases to Lessee the premises situated in the City of Ann Arbor, County of Washtenaw, and State of Michigan, more particularly described as follows:

Commencing at the E¼ corner of Sec. 8, T 3 S, R 6 E, Pittsfield Township, Washtenaw County, Michigan; thence along the E line of said section and the center line of South State Street (66 ft. wide) N 1° 39' W 1143.25 ft.; thence S 87° 25' W 60.0 ft. for the place of beginning; thence along the N line of Hilton Blvd. (66 ft. wide) S 87° 25' 160.0 ft.; thence N 1° 39' W 147.32 ft.; thence N 87° 25' E 160.0 ft.; thence S 1° 39' E 147.32 ft. to the place of beginning, being a part of the E¼ of the NE¼ of said Sec. 8, T 3 S, R 6 E, City of Ann Arbor, Washtenaw County, Michigan and containing 0.54 acres of land more or less. Subject to the rights of the public over the E'ly 60.0 ft. thereof as occupied by South State Street; hereafter to be known as Lease #B-20474.

together with the buildings, fixtures, equipment, machinery and appliances, if any, located thereon, including among others those items listed on the Equipment Rider, if any, attached hereto and made a part hereof, except any and all signs and trademark identifications listed on a Sign Loan Agreement, Form 26 979, signed by the parties. All of the foregoing properties leased hereunder are hereinafter collectively referred to as the "Premises".

2. (a) To Have and To Hold unto Lessee for a term commencing on the 1st day of July, 19 82 and ending on the June day of 30, 19 85.

(b) Lessee may cancel the lease, or any renewal or extension thereof, at any time by giving Lessor at least sixty (60) days' written notice of such cancellation.

3. Lessee shall pay to Lessor as rent for the Premises, the sum of $ 2305.00 per month during the term of this lease unless a variable monthly rental is indicated below:

Jan.	$	July	$
Feb.	$	Aug	$
Mar.	$	Sept	$
Apr.	$	Oct	$
May	$	Nov	$
June	$	Dec	$

4. In the event that the original term of this lease is for more than one year, Lessor reserves the right to modify the rental to Lessor's established policy rental then in effect for this type facility on any anniversary date of the commencement of the term by giving Lessee at least ninety (90) days' advance written notice of such changed rental, and Lessee shall have the right at any time during said ninety (90) day period to terminate the lease upon giving Lessor fifteen (15) days' notice in writing.

EXHIBIT "B" (continued)

AMOCO OIL COMPANY LEASE # B-20474-1

5. The rent provided for in Paragraph 3 shall become due on the first day of each calendar month that the lease shall be in effect at Lessor's administrative center located at [redacted] or such other place as Lessor may in writing direct.

Amoco Oil Co. Drawer #55-318-A, Detroit, Mi. 48255

(a) Time is of the essence with respect to all rental payments and any other payments which may be due from Lessee to Lessor as reflected in the provisions of this lease. Lessor shall have the right, at its election, to impose a late payment charge against Lessee of One Hundred Dollars (or such other reasonable sum as may be established by Lessor from time to time to cover its extra handling costs) for each rental payment which is not received by Lessor by the first day of the respective calendar month, without prejudice to any other remedies of Lessor at law or in equity.

(b) Lessor shall have the right to impose a reasonable service charge against Lessee, in conformity with Lessee's class of trade in Lessee's area, for each check, if any, covering rent and/or other obligations of Lessee to Lessor which may be returned to Lessee for Non Sufficient Funds and which may subsequently be made good by Lessee. Failure of Lessee to make good, within five (5) days after written notice is delivered by Lessor, any check which shall be dishonored for Non Sufficient Funds shall entitle Lessor, at Lessor's option, to terminate this Lease, without prejudice to any other remedies of Lessor at law or in equity.

6. In order to secure that the Premises meet the public's requirements for service during periods of normal traffic, the parties agree that the Lessee shall keep the Premises open for operation and properly illuminated seven days a week during the following minimum hours:

24 hrs.

_____ A.M. to _____ P.M. weekdays and Saturdays, _____ A.M. to _____ P.M. on Sundays.

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8. (a) Lessee shall not commit nor suffer waste to be committed upon the Premises and shall not erect on the Premises any buildings or structures, nor make any permanent alterations in, or additions or attachments of items to, the Premises without first obtaining the written consent of Lessor. Lessee shall place no outside structure or trailers on the Premises without Lessor's written consent, and if said consent is granted, the trailers must meet Lessor's approved standards for safety, location, and appearance.

(b) Lessee shall keep the Premises, together with the adjoining sidewalks and entrance driveways, in good repair, appearance, and order; and, at the expiration of this lease, or upon sooner termination thereof, Lessee shall surrender the Premises to Lessor in substantially as good condition as when received, ordinary wear and tear excepted.

(c) Lessee shall perform necessary upkeep and maintenance to the Premises, and in so doing shall follow reasonable guides outlining proper care which Lessor may from time to time provide to Lessee. Lessee shall keep the Premises, including adjoining areas, alleys, and sidewalks, in clean, safe, and healthful condition.

9. (a) Lessee shall pay all sewer, water, light, heat and other operating expenses in connection with Lessee's use of the Premises.

(b) Lessee shall pay any and all fees, licenses, and occupation or privilege taxes upon or with respect to the maintenance and use of the Premises or with respect to any business, occupation, or privilege conducted or exercised upon or in connection with the Premises, as well as any and all taxes upon property owned by Lessee and located thereon.

10. Lessee shall comply with all federal, state, and municipal laws, rules, regulations, use permits, and all conditions and restrictions with regard to the use and condition of the Premises and with regard to Lessee's activities thereon. Without limiting the foregoing, Lessee shall comply with all requirements of federal, state, and local occupational, health and safety agencies, and environmental protection agencies, concerning the receipt, storage and dispensing of motor fuels, the disposal of waste materials, and Lessee's other activities on the Premises, including particularly those governing recovery of vapors, segregated storage for unleaded gasolines, nozzle sizes for unleaded gasolines, and the like.

Any usage of lead-free gasoline tanks or dispensers for other than lead free product will require that Lessee shall cleanse and purge such equipment to Lessor's satisfaction before their reuse for lead-free products or upon vacating the premises.

11. Lessor, its agents and employees shall not be liable for any loss, damage, injuries, or other casualty of whatsoever kind or by whomsoever caused, to the person or property of anyone (including Lessee) on or off the Premises, arising out of or resulting from Lessee's use, possession or operation thereof, or from defects in the Premises whether apparent or hidden, or from the installation, existence, use, maintenance, condition, repair, alteration, removal, or replacement of any equipment thereon, whether due in whole or part to negligent acts or omissions of Lessor, its agents or employees, and Lessee for himself, his heirs, executors, administrators, successors and assigns, hereby agrees to indemnify and hold Lessor, its agents and employees, harmless from and against all claims, demands, liabilities, suits or actions (including all reasonable expenses and attorneys' fees incurred by or imposed on Lessor in connection therewith) for any such loss, damage, injury or other casualty. Lessee also agrees to pay all reasonable expenses and attorneys' fees incurred by Lessor in connection with the provisions of this paragraph.

12. (a) Lessee shall not carry on or permit upon the Premises any offensive, noisy or dangerous trade, business, manufacture, or occupation or any nuisance to the public or to adjoining neighbors.

(b) At all times during the period of this lease the Premises shall be devoted solely to the operation of a gasoline sales facility and the handling, storage and dispensing thereon and therefrom of motor fuels, motor oils, other petroleum products, and such other products and services (including vehicle towing) as are customarily handled, sold and distributed at a gasoline sales facility having similar improvements. The rental set forth above is based upon the use of the Premises for such activities. Lessor's consent must first be obtained in writing for use of the Premises for any additional purposes (for example, parking lot, car washes, car rentals or sales, trailer rentals, equipment rentals, or the sale of goods, hardware, and the like). Lessor's consent will not be unreasonably withheld.

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EXHIBIT "B" (continued)

AMOCO OIL COMPANY LEASE # B-20474-1

(c) Lessee shall have the responsibility of protecting all existing licenses and permits necessary for the operation of a gasoline sales facility. These must be returned undiminished to Lessor at the termination of this lease. Should any damages occur by reason of diminution or loss of any such licenses and/or permits, Lessee agrees to indemnify Lessor for such loss.

(d) Lessee agrees not to permit upon the Premises any vending machines for contraceptives or other items of a nature which may offend an appreciable segment of the public.

(e) Lessee shall not store or permit to be stored upon the Premises any wrecked or abandoned vehicles. Should Lessee engage in the business of vehicle towing, Lessee agrees to provide other suitable premises for handling vehicles in wrecked, abandoned or temporarily disabled condition. Temporarily disabled vehicles which cannot be operated under their own power, not including wrecked or abandoned vehicles, may be stored on the Premises, but only for a period not exceeding forty-eight (48) continuous hours.

13. (a) Lessee may use Lessor's trade names, trademarks, brand names, and color scheme ("Lessor's marks") only in connection with the advertising, distribution, and sale of products supplied by Lessor under said respective Lessor's marks.

Nothing in the foregoing shall derogate from the provisions of Paragraph 20 (a) hereof, which recognize Lessee's independence, among other things, to deal in other parties' trademarked products.

(b) Lessor shall have exclusive discretion whether its trademarks shall be displayed on pole-signs, buildings, and similar prominent places on the Premises and may enter upon the Premises, at any time during or after the term hereof, to erect or remove said marks without any liability or obligation to Lessee.

(c) Lessee shall not use Lessor's marks in connection with the advertising, distribution, or sale of: (1) any mixture, blend, dilution or adulteration of a product supplied by Lessor; (2) products not sold in Lessor's original packages and containers or not sold through dispensing equipment approved by Lessor; or (3) any product not supplied by Lessor. Lessor shall have the right at all times to inspect products in the possession or control of Lessee to determine compliance with these provisions and quality standards.

(d) Lessee shall use Lessor's marks only in accordance with Lessor's approved specifications and procedures, which Lessor may change at any time.

(e) Neither Lessee nor any subsidiary or affiliate of Lessee, or agent or representative thereof, shall use Lessor's marks as part of a corporate or trade name or as part of Lessee's own trademarks.

If Lessee wishes to use Lessor's Torch and Oval trademark in conjunction with Lessee's name on forms, advertising materials, and the like, Lessee may do so only if the words "Products Dealer" appear below the trademark so as to read "AMOCO Products Dealer" or, if applicable, "STANDARD Products Dealer."

(f) All signs and trademark identifications bearing Lessor's marks which are employed by Lessee in the performance of Lessee's responsibilities hereunder shall be covered by a Sign Loan Agreement, Form 26-979, and the parties hereby incorporate by reference herein the provisions of said Agreement as to any sign or trademark identification not specifically covered by such an Agreement.

(g) Before any dispensing equipment on the Premises shall be used for the purpose of dispensing products other than under Lessor's trademarks, Lessee shall remove from such equipment all decals, letters, emblems, trademarks and trade names identifying the products as Lessor's.

(h) If Lessee for any reason whatsoever shall totally or substantially discontinue the sale from the Premises of Lessor's trademarked motor fuels, Lessee, as a step to eliminate possible confusion of the public, shall remove from display on the Premises all signs, decals, letters, emblems, trademarks and trade names of Lessor. The provisions of Paragraph 24(b) hereof shall also take effect.

(i) Upon the expiration or termination of this lease, for any reason whatsoever, Lessee shall immediately cease using Lessor's marks and any marks confusingly similar thereto and shall return to Lessor all signs and trademark identifications loaned by Lessor to Lessee, in accordance with the provisions of the Lease and the applicable Sign Loan Agreement, Form 26-979. If Lessee fails to discontinue or cause to be discontinued any and all use and display of Lessor's marks after such expiration or termination, Lessor is hereby expressly given the right to enter upon the Premises and remove all or any part of any [illegible] at Lessee's expense [illegible] such means as Lessor may deem desirable, without any liability or obligation to Lessee.

14. (a) [illegible] 33

(b) Lessor shall not unreasonably withhold its consent to any of the foregoing [illegible]. In giving any consent to any assignment (voluntary or by operation [illegible] or otherwise), Lessor may, at its election [illegible] the consent upon: (1) the agreement of the proposed assignee to enter into a Trial Lease in conformity to the provisions [illegible] the Petroleum Marketing Practices Act; and (2) simultaneously therewith the execution by Lessee of a Mutual Cancellation of this lease. Refusal of the proposed assignee or Lessee to enter into such Trial Lease and Mutual Cancellation shall conclusively be adequate reason for Lessor to withhold its consent to the assignment. In situations where subparagraphs 15(g) and 15(h) are or might be applicable, the provisions of these subparagraphs shall govern and shall supersede the provisions hereinabove contained in this subparagraph.

As another alternative, or in addition, Lessor may, at its election, condition its consent upon the express agreement of Lessee to remain liable hereunder for the observance by the proposed assignee of all of the terms and conditions hereof, including the payment of rent, and refusal of Lessee to do so shall conclusively be adequate reason for Lessor to withhold its consent to the assignment.

Nothing in the above shall constitute a limitation in any manner on Lessor's rights to reasonably withhold its consent to any action covered by subparagraph 14(a) or to suggest other alternative qualifications to the giving of such consent.

EXHIBIT "B" (continued)

AMOCO OIL COMPANY LEASE # B-20474-1

16. Lessor shall have the right to terminate or non-renew this lease, and any applicable franchise relationship under if a Petroleum Marketing Practices Act or other applicable federal, state or local act of a similar nature, if any of the following events shall occur:

(a) Breach of any provision of this lease by Lessee.

(b) Abandonment of the Premises by Lessee or failure by Lessee to operate the Premises for normal sales of gasoline during normal business hours for seven (7) consecutive days or such lesser period which under the facts and circumstances constitutes an unreasonable period of time.

(c) Conviction of Lessee of any felony involving moral turpitude.

(d) Commission by Lessee or any of Lessee's employees or agents of any deception, fraudulent, illegal, immoral, or other improper act relative to the business on the Premises which is detrimental to Lessor or to any member of the public, including, without limitation: (1) participation in any fraudulent or improper use of any credit card or motor club membership card issued or honored by Lessor with the purpose or effect of defrauding Lessor or the authorized holder of such card; (2) tampering with pump meters, misrepresentation in pump meter readings and/or the reporting thereof, and the like; and (3) violation of any consumer protection law or regulation. Purchase by Lessee, without Lessor's consent, of credit card delivery tickets from other dealers covering sales of Lessor's products shall be deemed fraudulent for purposes hereof.

(e) Failure by Lessee to pay to Lessor in a timely manner when due all sums to which Lessor is legally entitled.

(f) Failure of Lessee, in good faith, to devote his personal attention upon the Premises to managing the business activities of the gasoline sales facility referred to in Paragraph 12, without first securing a written consent from Lessor.

(g) Death or other continuing severe physical or mental disability of Lessee of at least three months' duration (or such shorter duration which under the facts and circumstances constitutes an unreasonable period of time) which renders Lessee unable to provide for the continued proper operation of the gasoline sales facility activities referred to in Paragraph 12.

(h) Declaration of bankruptcy by Lessee, judicial determination that Lessee is bankrupt or insolvent or any other reasonably convincing evidence of financial distress of Lessee, such as, without limitation, appointment of a receiver for Lessee, assignment by Lessee for the benefit of creditors, giving of one or more Non Sufficient Fund checks which remain dishonored after five days from the postmark date (or, in the case of hand delivery, date of personal delivery) of notice from Lessor to cure the dishonor, and the like.

(i) Removal of, or significant reduction in, Lessee's assets located on the Premises to the prejudice of Lessor's right of distraint.

(j) Destruction of all or a substantial part of the Premises, it being understood that if the Premises are rendered untenantable, rent shall abate as of the date the Premises are rendered untenantable. In the event the Premises shall be subsequently rebuilt or replaced by Lessor and operated under a lessee franchise relationship, Lessor shall grant to Lessee a thirty (30) day right of first refusal of the new franchise, dating from the postmark date of notice by Lessor to Lessee that the Premises will be rebuilt for franchise operation.

(k) Failure of Lessee to exert good faith efforts to carry out the provisions of this lease and/or any applicable franchise relationship.

(l) Condemnation or other taking, in whole or in part, of the Premises pursuant to the power of eminent domain or to a conveyance in lieu thereof. Lessor shall be entitled to the full amount of any award for such taking which represents the value of the Premises, to the same extent as though the lease did not exist. However, the amount of any award for such taking which represents, as such, any loss of business opportunity or good will by Lessor shall be fairly apportioned by Lessor between the parties hereto.

18. (a) If Lessee shall fail to perform any of the covenants of this lease, or if any other ground for termination or non-renewal by Lessor shall occur, Lessor shall have the right, at Lessor's election, to terminate or non-renew this lease and any applicable franchise relationship by giving notice as hereinafter provided. The notice shall be furnished to Lessee not less than ninety (90) days prior to the date on which the termination or non-renewal is to take effect, except that in circumstances where such length of notice would be unreasonable, the notice shall be furnished on the earliest date which is reasonably practicable.

(b) For purposes of the foregoing and any statute governing termination or non-renewal, all provisions herein granting rights of termination and non-renewal to Lessor shall be construed as imposing upon Lessee an affirmative duty to take action to avoid the event which justifies Lessor's exercise of a right of termination or non-renewal, regardless of whether or not the provision is expressly stated in terms of such an affirmative duty.

(c) With respect to the first notice, only, of failure by Lessee to make a timely rent payment under Paragraph 3 hereof, said notice shall be rendered null and void if Lessee within fifteen (15) days after the postmark date of the notice shall cure the default by payment of the rent as specified in Paragraph 3.

(d) With respect to the first notice, only, of a default or multiple defaults by Lessee under any provision (or provisions) of this lease other than Paragraph 3 and other than any sub paragraph listed in sub paragraph 18(e) below, said notice shall be rendered null and void if Lessee within thirty (30) days after the postmark date of the notice shall cure the default (or defaults). Where the notice period under sub-paragraph 18(a) above is less than ninety (90) days, the time within which to cure the default shall be one-half of the notice period, but never to exceed thirty (30) days.

(e) The aforesaid rights to nullify a notice shall not apply to sub paragraphs 18(b) and 15(b), (c), (d), (g), (h), (j), and (l) hereof.

17. If the blank in this paragraph is not filled in, this paragraph shall be inoperative.

Lessor's estate in the Premises derives from an underlying lease for which the present term expires on [illegible]. There may be options on Lessor's part to renew the underlying lease for certain renewal terms. Said underlying lease may be terminated or may expire and not be renewed during the term of, or at the expiration of, the lease from Lessor to Lessee, in which event Lessor shall have the right to terminate or non-renew this lease and any applicable franchise relationship coincidentally with Lessor's loss of its underlying leasehold estate.

Lessee hereby acknowledges Lessee's understanding of the above.

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EXHIBIT "B" (continued)

AMOCO OIL COMPANY LEASE # B-20474-1

18. This lease shall be subject to all mortgages, conditional sales liens, building and zoning and use restrictions of record, easements, and other liens and encumbrances affecting Lessor's title to the Premises at the date of execution hereof. This lease shall be subject to all zoning restrictions of every nature imposed upon the Premises at the date hereof or hereinafter imposed during the term of this lease.

19. Any notice provided for herein shall be considered as properly given if personally delivered or if sent by certified mail duly addressed to Lessee at Lessee's address as shown in the introduction to this lease and to Lessor at its Regional Office address as also shown in said introduction. The postmark date shall be the date of any notice sent by certified mail.

20. (a) None of the provisions of this lease shall be construed as reserving to Lessor the right to exercise any control or direction over the general business of Lessee conducted upon the Premises. It is understood and agreed that as long as Lessee shall use the Premises as a [illegible] herein provided, the entire control and direction of such activities shall be and remain solely with Lessee. It is further understood and agreed that Lessee shall have no authority to employ any person as agent or employee for or on behalf of Lessor [illegible]

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(c) Lessee shall at all times display a sign upon the Premises, clearly visible to [illegible] ns upon the Premises, reading as follows:

"_____ Raymond V. Lucy _____, Independent Dealer."

[name of Lessee]

21. On the termination or cancellation of this lease or any renewal or extension thereof, Lessor, at anytime thereafter, shall have the right, at Lessor's election, either with or without process of law, to enter upon the Premises and take possession of the same, and to remove any merchandise and other personal property situated thereon, including the right to use such force as may be necessary to effectuate the actual possession thereof in Lessor, and such entry shall not be regarded as a trespass or be sued for as such or be regarded as in any way unlawful. Lessor, in addition thereto, may sue for and recover all damages accrued or accruing under this lease, or arising out of any violation thereof, and Lessor may so sue and recover without declaring this lease void or entering into possession of the Premises. Lessor may pursue any other remedies for any violation of this lease or any of its covenants by Lessee. The above enumerated remedies are concurrent and are at the option and discretion of Lessor, and the pursuit of any one shall not amount to an election or bar the pursuit of any other remedies, whether or not enumerated herein. Termination of this lease shall not affect or abridge in any way the rights and obligations of the parties accruing prior to termination.

22. In the event Lessee shall hold over beyond the expiration or any termination date of this lease, such hold over tenancy shall be at sufferance and shall in no way color the Lessee's possession with any right of tenancy. And it shall be understood and agreed between the parties that the rights accruing to either by reason of appropriate notice of termination or non renewal shall not be waived and shall continue in full force and effect. It shall be the responsibility of Lessee if Lessee remains in possession without Lessor's consent, to pay as liquidated damages a sum, computed on a daily basis, equal to three times the rental rate provided for in Paragraph 3 hereof.

23. Except as herein specifically modified or restricted in writing, each party hereby expressly reserves all rights under the Petroleum Marketing Practices Act (15 U.S.C. 2801ff), subject to any interpretations and implementations of said rights which may be contained in this lease. No omission of any reference herein to any specific such right shall constitute a waiver thereof.

24. (a) As long as Lessee shall exclusively or to a significant degree sell from the Premises Lessor's trade-marked motor fuels, this lease shall be construed, together with all other written motor fuel [illegible] agreements and related written agreements between the parties, to determine the nature of, scope of, and rights of the parties under any franchise relationship created by the Petroleum Marketing Practices Act or other applicable federal, state or local act of similar nature. In the event of any lawful termination or non-renewal of the lease, said franchise relationship and all of said other agreements shall automatically terminate simultaneously herewith, except were a superseding lease is immediately executed by Lessor and Lessee.

(b) If Lessee for any reason whatsoever shall totally or substantially discontinue the sale from the Premises of Lessor's trade-marked motor fuels, any franchise relationship between Lessor and Lessee created by this lease shall automatically terminate without further act or notice by either party. The lease shall remain in effect. All other agreements related to the terminated franchise relationship shall be subject to termination in accordance with their respective provisions.

25. Lessee may, upon the expiration of this lease or upon its sooner termination, remove any and all equipment, tools, fixtures, containers or machinery belonging to Lessee and placed or installed by Lessee upon the Premises, provided that Lessee at that time is not in default under the terms of this lease. Should Lessee fail to remove same within ten (10) days after expiration or termination of the lease, title to such property, at Lessor's option, shall pass to Lessor.

Lessee shall restore the Premises to their original condition, less ordinary wear and tear, if such removal of Lessee's property causes damage to the Premises. Upon any failure of Lessee to do so, Lessor may restore the Premises at Lessee's expense.

26. In order to assist Lessor in detecting leakages or other causes of product shortages and/or the presence of water or other foreign substances in any tanks leased to Lessee hereunder, and in order to assist Lessee and/or Lessor in complying with any governmental requirements, Lessee, at reasonable intervals and whenever specifically requested by Lessor, shall take physical inventory measurements of the amount of gasolines and/or diesel fuels in storage and shall report such measurements to Lessor promptly (e.g., if Lessee is to submit meter readings to Lessor, at or before the time when Lessee next submits such readings). Lessee shall report any detected or suspected problem(s) immediately to Lessor's territory manager, terminal manager or other authorized representative. Nothing in the foregoing shall derogate in any manner from any obligation of Lessee, as otherwise fixed between the parties, to repair and maintain the tanks and/or to prevent leakage therefrom and/or contamination, nor shall it shift any such obligation, in whole or in part, to Lessor.

27. The waiver of any breach of any covenant, condition or stipulation contained herein shall not be taken to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation. Any failure of Lessor to enforce rights or seek remedies upon any default of Lessee with respect to the obligations of Lessee hereunder, or any of them, shall not prejudice or affect the rights or remedies of Lessor in the event of any subsequent default of Lessee.

EXHIBIT "B" (continued)

AMOCO OIL COMPANY LEASE # B-20474-1

28. This lease shall not be modified or amended except in writing. No obligation, agreement or understanding shall be implied from any of the terms and provisions of this lease, all obligations, agreements and understandings with respect to the subject matter hereof being expressly set forth herein.

29. This lease shall not be binding upon Lessor, nor shall any delivery of possession to or acceptance of rent from Lessee bind Lessor under the lease or otherwise, unless and until this lease shall have been signed on behalf of Lessor by or at the direction of its authorized representative and a fully executed copy thereof delivered to Lessee.

30. In the event one or more provisions of this lease shall be declared or adjudged invalid or void by a court of competent jurisdiction, this lease, absent such provision(s), shall remain in full force and effect, provided, however, that in the event Paragraph 4 or any other provision hereof deemed material by Lessor, in its sole judgment, shall be invalidated or voided, Lessor, at its option, may terminate this lease pursuant to the procedures set forth in sub-paragraph 24(a) hereof.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first above written.

31. This lease supersedes and cancels that certain lease dated March 29, 1977 #B-20474-

Witness C. Ward

Amoco Oil Company

By [signature]

Title Dist Mgr

Witness C. Ward

Lessee

Raymond V. Lucy

BEST AVAILABLE COPY